- (2) The surcharge imposed shall increase to 20 percent for the second 12 months and to 30 percent per year thereafter until the deficiency is cured.
- (3) After the first 12 months of imposition of the surcharge and in lieu of imposition of any further surcharge, Western may impose a penalty which would reduce the resource delivered under a customer's long-term firm power contract(s) by 10 percent. The resource reduction may be imposed either
- (i) When it appears to Western to be more effective to assure customer compliance, or
- (ii) When such reduction may be more cost-effective for Western.
- (4) The penalty provisions in existing contracts will continue to be in effect and shall be administered and enforced in accordance with such contract provisions
- (e) The surcharge will be assessed on the total charges for all power obtained by a customer from Western and will not be limited to firm power charges. When a customer resolves the deficiencies, the imposed surcharge or power withdrawal will cease, beginning with the first full billing period after compliance is achieved.
- (f) In situations involving an IRP submitted by a member-based association on behalf of its members where a single member does not comply, a penalty or withdrawal shall be imposed upon the MBA on a pro rata basis in proportion to that member's share of the total MBA's power received from Western. In situations involving noncompliance by a member of an IRP cooperative, any applicable penalty shall be imposed directly upon that member if it has a firm power contract with Western. If the IRP cooperative member does not have a firm power contract with Western then a penalty or withdrawal shall be imposed upon the member's MBA or parent-type entity on a pro rata basis in proportion to that member's share of the total MBA's power received from Western.

§ 905.18 Administrative appeal process.

(a) If a customer disagrees with Western's determination of the acceptability of its IRP submittal, its compli-

- ance with an approved IRP, or any other compliance issue, the customer may request reconsideration by filing a written appeal with the appropriate Area Manager. Appeals may be submitted any time such disagreements occur and should be specific as to the nature of the issue, the reasons for the disagreement, and any other pertinent facts which the customer believes should be brought to Western's attention. The Area Manager will respond within 45 days of receipt of the appeal. If resolution is not achieved at the Area Office level, a further appeal may then be made to the Administrator who will respond within 30 days of receipt.
- (b) Upon request, Western will agree to use mutually agreeable alternative dispute resolution procedures, to the extent allowed by law, to resolve issues or disputes relating to compliance with IRP requirements.
- (c) Western shall not impose a penalty while an appeal process is pending. However, if the appeal is unsuccessful for the customer, Western shall impose the penalty retroactively from the date the penalty would have been assessed if an appeal had not been filed.
- (d) A written appeal or use of alternative dispute resolution procedures does not suspend other reporting and compliance requirements under these regulations.

$\S 905.19$ Periodic review by Western.

- (a) Western will periodically review customer actions to determine whether they are consistent with the approved IRP. Small customer plans are not subject to this periodic review.
- (b) Beginning 3 years after the effective date of these regulations, Western shall periodically review selected, representative IRPs and the customer's implementation of the applicable IRP. These reviews are in addition to, and separate and apart from, the review of initial IRP submittals and updated IRPs made under §§ 905.11 and 905.13 of these regulations.
- (c) Western will review a representative sample of IRPs from each of its marketing areas. The representative samples will consist of IRPs that reflect the diverse characteristics and circumstances of the customers that purchase power from Western. At a

minimum, Western will review a sample of IRPs from the following:

- (1) IRPs indicating a need to acquire resources in the IRP study period;
- (2) IRPs prepared by individual customers, IRP cooperatives, and member-based associations; and
- (3) IRPs that do not show plans to implement DSM programs in the IRP study period.
- (d) Periodic reviews may consist of any combination of review of the customer's annual IRP progress reports, telephone interviews, or on-site visits. Western will document these periodic reviews and shall report on the results of the reviews in Western's annual report.

§905.20 Freedom of Information Act.

IRPs and associated data submitted to Western will be made available to the public unless Western has determined, pursuant to 10 CFR Part 1004, that particular information is exempt from public access under the Freedom of Information Act (FOIA). Customers may request confidential treatment of all or part of a submitted document under FOIA's exemption for confidential business information. Materials so designated and which Western determines to meet the exemption criteria in the FOIA will be treated as confidential and will not be disclosed to the public.

§ 905.21 Program review.

Before January 1, 2000, and at appropriate intervals thereafter, Western shall initiate a public process to review these IRP regulations in order to determine whether the criteria for approval of IRPs should be revised to reflect changes in technology, needs, or other developments.

Subpart C—Power Marketing Initiative

§ 905.30 Purpose and applicability.

(a) The Power Marketing Initiative (PMI) provides a framework for marketing Western's long-term firm hydroelectric resources. For covered projects, Western will make a major portion of the resources currently under contract available to existing long-term firm power customers for a

period of time beyond the expiration date of their current contracts.

(b) The Western projects covered by this subpart are the Pick-Sloan Missouri Basin Program—Eastern Division and the Loveland Area Projects (LAP). The PMI applies to covered projects to the extent it is consistent with other contractual and legal rights, and subject to any applicable project-specific environmental requirements.

§905.31 Term.

Western will extend resource commitments for 20 years from the date existing contracts expire to existing customers with long-term firm power contracts from projects identified in section 905.30(b).

§ 905.32 Resource extensions and resource pool size.

- (a) Western will extend a project-specific percentage of the marketable resource, determined to be available at the time future resource extensions begin, to existing customers with long-term firm power contracts. The remaining unextended power will be used to establish project-specific resource pools. An initial level of 96 percent of the marketable resource will be extended for the Pick-Sloan Missouri Basin Program—Eastern Division and the Loveland Area Projects.
- (b) At two 5-year intervals after the effective date of the extension to existing customers, Western shall create a project-specific resource pool increment of up to an additional 1 percent of the long-term marketable resource under contract at the time. The size of the additional resource pool increment shall be determined by Western based on consideration of the actual fair-share needs of eligible new customers and other appropriate purposes.
- (c) The initial pool percentages shall be applied to the marketable resource determined to be available at the time future resource extensions begin. Subsequent percentages shall be applied to the resource under contract at the time.
- (d) The additional resource pool increments shall be established by pro rata withdrawals, on 2 years' notice,